



ARRANGEMENT OF FLATS OWNERSHIP RIGHTS BY FOREIGN NATIONALS AFTER THE OMNIBUS LAW

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Abstract: This research aims to know How the above Property Rights arrangement apartment units in agrarian Tree Law and Apartment Law. Besides, this article analyzes the legality of foreign nationals in unit ownership apartment buildings from the perspective of omnibus law, fundamental agricultural law, and law about apartment buildings. The research method used in researchers this tian is a normative juridical method. In implementation research, the problem will be assessed based on the applicable norms or laws. The research found that legal certainty regarding man the registration of land for the construction of flats cannot be guaranteed by the omnibus law and other technical regulations, such as government regulation number 18 of 2021 concerning Management rights, land rights, apartment units, and land registration. The cause of not guaranteed ownership of land rights by foreign nationals is that the rules that applied previously have remained the same.

Keywords: Flats House; Omnibus Law; Right of Ownership

1. Introduction

The definition of flats is mentioned in Article 1 paragraph 1 of Law number 20 of 2011 concerning Flats Units, namely multi-storey buildings built in an environment which are divided into functionally structured parts both in horizontal and vertical directions and are units each of which can be owned and used separately is called an apartment unit. The right that arises from the apartment unit is called the ownership right to the apartment unit. Property rights to apartment units are individual and separate property rights, including joint rights to shared shares, objects, and common land.¹ The right that arises from the apartment unit is called the ownership right to the apartment unit. Property rights to apartment units are individual and separate property rights, including joint rights to shared shares, objects, and common land.²

Law No. 20 of 2011 concerning Flats stipulates that flats can be built on the land:

- a. Right of ownership
- b. Building Use Rights or Use Rights on national land.
- c. Building use rights or usage rights over management rights.

¹ Urip Santoso. *Hak Atas Tanah, Hak Pengelolaan Dan Hak Milik Atas Satuan Rumah Susun, Edisi Pertama*. Depok: PT. Kharisma Putra Utama, 2017, Hlm. 215.

² *Ibid.*

Law Number 11 of 2020 concerning Job Creation is a new law that was passed in Jakarta on 2 November 2020 by President Joko Widodo and promulgated at the same time and place by the Minister of Law and Human Rights Yasonna H. Laoly. Paragraph 3 concerning Flats Units for Foreigners Article 144 Paragraph (1) of the Job Creation Law states:

1. Property rights to Flats Units are given to:
2. Indonesian Citizen;
3. Indonesia Legal Entity;
4. Foreign Nationals Who Have Permits According to the Regulations
5. Legislation;
6. Foreign Legal Bodies That Have Representation in Indonesia; Or
7. Representatives of Foreign Countries and International Institutions that are or have representatives in Indonesia.

Articles 144 and 145 of Omnibus Law state that foreigners can obtain ownership rights to flats (apartment units) on land with building use rights. This regulation is expected to contribute to the development of the property industry and will have a double impact on the growth of various other industries. Expansion of granting ownership rights to flats over land with building use rights granted to foreigners, including foreign legal entities.

Table 1: Arrangement of land rights for Foreign Citizens.

Item	PP No 41.1996	PP No 103/2015	PP No 18/2021
Subject	Foreigners who can share benefits for the national development	Foreigners who can provide benefits, do business, work or invest, and hold residence permits.	Foreigners who provide business benefits, work, and invest Permit holders.
Land rights	Use rights over state land based on flat unit agreements on state land	Use rights over state land, use rights over property rights	Right to use house on state land. Use Rights over Property Rights. Flat: Use Right/Utilization Right on state land. Use Right/Building Use Right on Management Right.

Development	The construction can be carried out by foreigners with the approval of HAT based on the Agreement.	Residential or apartment units are a new purchase.	Unregulated
Period of Use Rights	25+20+25	30+20+30	30+20+30
Inheritance	Unregulated	Can be inherited heirs must have a residence permit.	It can be inherited heirs are not regulated whether to have a residence permit.
Common Property	Unregulated	Indonesian citizens who are married	Indonesian citizens who are married

Based on the legal issues raised in this article, there have been previous studies on legal issues. In this research, including research conducted by Nanda Soraya, I Wayan Kartika Jaya Utama and by Herlin Djaja Waluja, but the legal issues are different because this article will discuss the enactment of several unchanged rules regarding the ownership of land rights by foreign nationals and the granting of ownership rights to flat units based on omnibus law.

2. Research Methods

The type of research in this article is normative juridical. The research is carried out by studying legal concepts as well as written regulations and other legal materials using a statutory approach related to the perspective of ownership of flats units by foreigners in Indonesia. Also, there is conceptual approach that examines legal concepts and doctrines as a supporting basis based on concepts related to the perspective of Flats House ownership in Indonesia.

3. Discussion

Based on the ownership of apartment units, apartment units can be controlled, flats can generally be owned or rented, unique flats can be rented or rented, and state flats can be rented or borrowed. Commercial flats can be owned or rented. Public flats or commercial flats can be transferred and can be transferred by the owner of the flat unit to another person because the flat is owned. Meanwhile, unique flats and state flats cannot be transferred and transferred because the flats are not owned in nature but are borrowed, rented, or leased.

Law No. 20 of 2011 concerning Flats is a firm legal basis for managing flats based on the principles of welfare, justice and equity, nationality, affordability and convenience, efficiency and benefits, independence and togetherness, partnership, harmony and balance, integration, health, sustainability, and sustainability, safety, comfort, and convenience as well as security, order, and regularity. The Law on Flats gives broad authority to the government in the field of managing flats. It authorizes Regional Governments to carry out the management of flats in the area according to their authority.

According to the Basic Agrarian Law, private land can only be owned by individual Indonesian citizens and certain legal entities, which are referred to in the Government Regulation of the Republic of Indonesia Number 38 of 1963 concerning the Appointment of Legal Entities that Can Have Rights Ownership of Land (PP No. 38 of 1963). "Land with building use rights can be owned by individual Indonesian citizens and legal entities established according to Indonesian law and domiciled in Indonesia".³ Meanwhile, usufructuary land can also be owned by foreigners residing in Indonesia and foreign legal entities with representatives in Indonesia.

Since the enactment of Law Number 5 of 1960 concerning Basic Agrarian Regulations on September 24, 1960, the discourse on ownership of a residence or residence for foreigners domiciled in Indonesia has never ended. Through the Ministry of Agrarian Affairs and Spatial Planning/Head of the National Land Agency, the government issued regulation Number 29 of 2016 concerning Procedures for Granting, Relinquishment, or Transfer of Rights to Residential or Residential House Ownership by Foreigners Domiciled in Indonesia. The Minister of Agrarian Regulation stipulates that foreigners can own apartment units built on Building Use Rights through the transfer of rights in the form of buying and selling, grants, swaps, and auctions, the granting of Mortgage Rights, and the registration of Mortgage rights, fiduciary guarantees.

Law Number 11 of 2020 concerning Job Creation is a new law passed in Jakarta on 2 November 2020 by President Joko Widodo and promulgated at the same time and place by the Minister of Law and Human Rights Yasonna H. Laoly. In Paragraph 3 concerning Flats Units for Foreigners Article 144 Paragraph (1) of the omnibus Law, it is stated:

Property rights to Flats Units are given to:

- a. Indonesian Citizen;
- b. Indonesia Legal Entity;
- c. Foreign Citizens who have permits in accordance with the provisions of the laws and regulations;
- d. Foreign Legal Bodies That Have Representation in Indonesia; Or

³ R. Tony Prayogo, Penerapan Asas Kepastian Hukum dalam Peraturan Mahkamah Agung Nomor 1 Tahun 2011. *Jurnal Legislasi Indonesia*, Volume 13 Nomor 02 (2016), Hlm. 192. DOI: <https://doi.org/10.54629/jli.v13i2.151>.

- e. Representatives of Foreign Countries and International Institutions that are or have representatives in Indonesia.⁴

After the entry into force of the Job Creation Law, arrangements regarding the ownership of flats by foreign nationals underwent several changes, namely in Article 144 and Article 145 which expand the provisions that foreign nationals can own flats on the right to build, which is clarified in Article 71 Government Regulation Number 18 of 2021. Articles 144 and 145 of the Job Creation Law state that foreigners can obtain ownership rights to flats (apartment units) on land with building use rights. This regulation is expected to contribute to the development of the property industry and will have a double impact on the growth of various other industries. Expansion of granting ownership rights to flat units over land with building use rights granted to foreigners, including foreign legal entities.

Article 144, paragraph (2) explains that ownership rights to flats on land with building use rights can be transferred, transferred, and guaranteed by foreigners. The ownership right of an apartment unit could be guaranteed by being encumbered with a mortgage Under provisions of regulations, as stated in Article 144 paragraph (3). Article 145 Omnibus Law explains that flat ownership rights that can be given to foreigners are flats on land with building use rights and use rights on state land or Management Rights.

This article is further regulated in PP No. 18 of 2021 concerning Management Rights, Land Rights, Flats Units, and Land Registration, promulgated on February 2, 2021. Based on Article 71, it is explained that Flats that foreigners can own are flats erected on land with Building Utilization Rights (HGB) and usage rights on state land, freehold land, and HPL land.

“The right to own an apartment unit owned by a foreign citizen is one of the rights that can be used as collateral for a debt-burdened Mortgage Right. The ownership rights to these flats stand on land with ownership rights, building use rights, usufructuary rights over state land, and usufructuary rights over land management rights”.⁵

Based on this, it is clear that the articles on Omnibus Law and Government Regulation Number 18 of 2021 which expand the ownership of apartment units by foreign nationals are not limited to land use rights, but can also be built on property rights to land. Even though foreign nationals are permitted to have ownership rights to apartment units, there are still restrictions, PP No. 18 of 2021 Article 69, which reads:

1. Foreigners who can own a house or residence are foreigners who have immigration documents under statutory provisions.
2. In the case of a foreigner who dies, the heirs can inherit the house or residence referred to in paragraph 1.

⁴ M.J. Widijatmoko, Notaris/PPAT Jakarta Timur. Artikel Ilmiah Rumah Susun Ambruk, Hak Kepemilikan Otomatis Hapus 2012. http://medianotaris.com/rumah_susun_ambruk_hak_kepemilikan_otomatis_hapus_berita216.html. diakses pada tanggal 3 Oktober 2022.

⁵ Urip Santoso. *Op.Cit.* Hlm 236.

3. If the heir, as referred to in paragraph 2, is a foreigner, the heir must have immigration documents under the provisions of the laws and regulations.

Meanwhile, residential or residential houses that foreign nationals can own are

- a. Land house on land:
 1. Right of use;
 2. Right of use above
- b. Ownership rights that are controlled based on the agreement granting usufruct rights on the land title with the land deed maker's office act (PPAT).
- c. Management rights, based on land use agreements with management rights holders.
- d. Flats built on plots of land:
 1. The right to use or use buildings on national land.
 2. Use rights or building use rights over land with management rights.
 3. Right to use or use the building over the right of ownership.

Concerning the certificate of ownership of the apartment unit, Boedi Harsono stated that "the certificate of ownership of the apartment unit is a new creation in the Land Law".⁶ Boedi Harsono further stated that "the certificate of ownership of the apartment unit is not only proof of ownership of the apartment unit, it is also evidence joint ownership of shared shares, common objects, and common land in the amount of their proportional comparison value."⁷

Certificates of ownership rights to flat units have unique characteristics compared to certificates of land rights in general. The title of certificates, in general, the name of the certificate depends on the type of status of land rights. For example certificates of ownership rights, certificates of usufructuary rights if status the land is a usufructuary right, a building use rights certificate if the land status is a building use right, and a usufructuary certificate if the land status is a usufructuary right. Special characteristics of certificate of ownership of flat unit put forward by R. Soerapto:

“Certificate Evidence of ownership rights to the apartment unit is not tied to the type of land rights. Therefore, it applies to apartment units that are built on freehold land, building use rights or usufructuary rights; the certificate still uses the certificate of ownership rights to the apartment unit. The certificate's name doesn't depend on the status of rights to the land which the flat is built”.⁸

Flats built on land with usufructuary rights or building use rights are units of flats built in special economic zones, free trade zones and free ports, industrial zones, and other

⁶ Boedi Harsono, berbagai masalah hukum bersangkutan dengan rumah susun dan pemilikan rumah susun. Jakarta: majalah hukum pembangunan, Hlm 327.

⁷ *Ibid.*, Hlm 354.

⁸ R. Soerapto, Undang-undang Pokok Agraria dalam praktek, Jakarta: Universitas Indonesia Press, Hlm 105.

special economic zones. The study results show that legal certainty regarding the passing of the Job Creation Law and its derivatives, namely Government Regulation 18 of 2021 concerning management rights, land rights, apartment units, and land registration, has not been guaranteed. Several regulations have not been changed regarding ownership of land rights by foreign nationals. Article 47 paragraph (2) of the Flats Law, Article 36 paragraph (2) of the Basic Agrarian Law. Then, by giving Flat Unit Ownership Rights Based on the Job Creation Law.

Table 2. The similarities and differences between the research conducted by the authors and the research above.

No	Researcher name	Equality	Difference
1.	soraya	Both discussed the ownership of flats. Foreign ners.	This is more directed to the assessment and Stages of obtaining Mortgage Rights on the ownership of flats by foreign citizens.
2.	I Wayan Kartika Jaya Utama	Together Discussing Flats Units	Discussing Flat Units that apply to Indonesian citizens on land with Building Use Rights that stand on land with ownership rights as residences that can improve people's access to economic resources,
3.	Herlin Djaja Waluja	Equally discusses the ownership of Flats Units by foreigners but more on Legal Certainty in the transfer of Rights.	The difference is that there is a transfer of rights and guarantees, which are very broad in meaning, so legal uncertainty arises, especially for Indonesian citizens.

4. Conclusion

The results of the study, show that the rules regarding ownership of apartment units for foreign nationals in Indonesia are regulated in Law Number 20 of 2011 concerning Flats, Law Number 5 of 1950 concerning Agrarian Principles, Law Number 11 of 2020 concerning Job Creation and Government Regulation Number 103 of 2015 concerning Home Ownership by Foreigners domiciled in Indonesia. However, legal certainty regarding the passing of the Job Creation Law and its derivatives, namely Government Regulation number

18 of 2021 concerning management rights, land rights, apartment units and land registration, has not been guaranteed. This is due to the fact that several regulations have not been changed regarding the ownership of land rights by foreign nationals. In article 47, paragraph (2) of the Law on Flats, Article 36, paragraph (2) of the Basic Agrarian Law. Then, by giving Flat Unit Ownership Rights Based on the Job Creation Law.

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